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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ALMONT AMBULATORY SURGERY
CENTER, LLC, *et al.*,

Plaintiffs,

v.

UNITEDHEALTH GROUP
INCORPORATED, *et al.*,

Defendants.

UNITED HEALTHCARE SERVICES, INC.,
et al.,

Counterclaim Plaintiffs,

v.

ALMONT AMBULATORY SURGERY
CENTER, LLC, *et al.*,

Counterclaim Defendants.

Case No 2:14-cv-03053-MWF(AFMx)

**COUNTERCLAIM PLAINTIFFS'
OPPOSITION TO KAMILLE
DEAN'S MOTION TO
WITHDRAW**

Judge Michael Fitzgerald

Hearing

Time: 10:00 a.m.
Date: March 19, 2018
Place: Courtroom 5A

Discovery Cut-off: Sept. 14, 2018
Pretrial Conference: Jan. 7, 2019
Trial Date: Jan. 29, 2019

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1 This case is approaching its fourth anniversary, and in that time,
2 Counterclaim Defendants¹ have been represented by no fewer than sixteen
3 attorneys from nine law firms. In what looks like an attempt to leave the 28
4 Counterclaim Defendants without outside counsel, their current attorney, Kamille
5 Dean, is now threatening to withdraw unless Magistrate Judge MacKinnon orders
6 United to pay for Ms. Dean’s attorney’s fees and costs in reviewing documents for
7 production in discovery. Not coincidentally, this transparent attempt to extract
8 compensation from United comes at a time when Magistrate Judge MacKinnon has
9 compelled Counterclaim Defendants to search for, review, and produce responsive
10 documents—something they have successfully avoided for nearly three years. This
11 is an improper basis for withdrawal, but entirely consistent with Counterclaim
12 Defendants’ strategy to evade their discovery obligations and to disrupt any
13 progress toward a January 2019 trial date. Because Ms. Dean’s proffered reasons
14 for withdrawal do not establish “good cause,” this Court should deny Ms. Dean’s
15 motion.

16 I. BACKGROUND

17 On March 21, 2014, Plaintiff Providers, represented by the Hooper Lundy
18 law firm, initiated this action (as well as a related—but now dismissed—action
19 against United and several hundred plans and plan sponsors, *i.e.*, the “Main
20 Action,” Case No. 14-cv-2139) for millions of dollars owed for Lap Band services
21 allegedly provided to patients through numerous affiliated entities. Dkt. 1. Shortly
22 thereafter, United Healthcare Services, Inc., UnitedHealthcare Insurance Company,
23 and OptumInsight, Inc. (collectively “United”) brought a Counterclaim in this
24 “Removed Action” (14-cv-3053) alleging that Counterclaim Defendants, led by
25

26 ¹ “Counterclaim Defendants” herein refers to all Counterclaim Defendants except
27 AsiaTrust Nevis and Asset Management Irrevocable Trust, both of whom were
28 added in United’s Third Amended Counterclaim and neither of whom have
answered or otherwise appeared in this case.

1 brothers Julian and Michael Omid, conspired to defraud United and hundreds of
2 group health plans it administers into paying fraudulent medical claims. Dkt. 15.
3 Counterclaim Defendants initially consisted of all Plaintiffs, various other related
4 corporate entities, and brothers Michael and Julian Omid. Sheppard Mullin
5 represented the Omid brothers and Hooper Lundy represented all other corporate
6 Counterclaim Defendants. On April 30, 2015, United served its Second Amended
7 Counterclaim (“SACC”), adding three new Counterclaim Defendants (Cindy
8 Omid, Property Care Insurance, Inc., and DeVida USA, LLC) all of whom were
9 represented by the Kashfian & Kashfian law firm. Dkt. 152.

10 On September 16, 2015—the day before the Court held a hearing on
11 Counterclaim Defendants’ motion to dismiss the SACC—Sheppard Mullin moved
12 to withdraw from representing Julian and Michael Omid. Dkt. 223. United took
13 no position on that motion, and the Court granted it. Dkts. 230, 240. Robert Rice
14 then appeared on behalf of Michael and Julian Omid. Dkt. 246. Five months later,
15 Hooper Lundy moved to withdraw from representing the corporate Counterclaim
16 Defendants because it had not been paid and its clients were not cooperating. Dkt.
17 270. United did not oppose Hooper Lundy’s motion, but asked that Counterclaim
18 Defendants be required to retain substitute counsel before the time Hooper Lundy
19 was permitted to withdraw so that such withdrawal would not delay the resolution
20 of outstanding discovery obligations. Dkt. 290. The Court granted Hooper
21 Lundy’s motion but ordered the Plaintiff Providers to show cause on or before May
22 11, 2016 why its affirmative claims against United in the Main Action and
23 Removed Action should not be dismissed for failure to prosecute. Dkt. 318 at 5.
24 Counterclaim Defendants failed to retain new counsel before the deadline, and this
25 Court dismissed their claims with prejudice. Dkt. 335.

26 Since their affirmative claims were dismissed, Counterclaim Defendants
27 have been represented by a revolving door of attorneys, including:

- 28 1. Robert Rice (Law Offices of Robert Rice): Actively represented only

1 Michael and Julian Omid from November 23, 2015 until May 27,
2 2016, when he then appeared as counsel of record for eight of the
3 corporate Counterclaim Defendants. Dkts. 246, 341. On June 1, 2016,
4 Mr. Rice appeared as counsel for nine additional Counterclaim
5 Defendants. Dkt. 347. Mr. Rice continued in this role until
6 approximately September 30, 2016, when United was told that he is no
7 longer counsel on this matter although he has never formally
8 withdrawn and is still identified as a “lead attorney” on the docket.
9 Dkts. 246, 341, 347.²

- 10 2. Dmitriy Aristov (Aristov Law): First appeared on May 31, 2016, and
11 withdrew on September 30, 2016. Dkts. 345, 388.
- 12 3. Roger Diamond (Roger J Diamond Law Offices): First appeared on
13 June 3, 2016 and moved to withdraw on February 16, 2018. Dkts.
14 350, 764.
- 15 4. Imre Ilyes (Law Office of Imre Ilyes): First appeared on March 1,
16 2017. Mr. Ilyes has never actively participated in this litigation,
17 though he is still identified as a “lead attorney” on the docket. Dkt.
18 449.
- 19 5. Mark Jubelt (Law Office of Mark Jubelt): First appeared on
20 September 30, 2016 and withdrew on September 8, 2017. Dkts. 388,
21 518.
- 22 6. Kamille Dean (Law Offices of Kamille Dean, PLC): First appeared on
23 September 8, 2017 for all Counterclaim Defendants and moved to
24 withdraw on February 9, 2018. Dkts. 518, 757.
- 25 7. Kashfian & Kashfian LLP: Have represented Cindy Omid, Property
26

27 ² During a June 22, 2017 status conference with Magistrate Judge MacKinnon, Mr.
28 Jubelt indicated that he believed that Mr. Rice had withdrawn, although he had not
and still has not done so.

Care Insurance, Inc. and DeVida USA, LLC since July 15, 2015. Dkts. 177-79. Although Kashfian & Kashfian has never formally withdrawn and is still identified as a “lead attorney” on the docket for these three parties, it has not actively participated in this litigation since approximately April 2017. Recently, Ryan Kashfian has indicated to United that he “has not been a part of this case” and that Ms. Dean “took over” representation of each of his clients.

Notably, Ms. Dean has *not* moved to withdraw as counsel in matters pending before the Ninth Circuit in which certain Counterclaim Defendants are still appealing several orders, including the denial of their motions to recuse and motions for reconsideration of the Court’s May 16, 2016 dismissal of Plaintiffs’ claims.

Throughout all of these changes, the one constant has been Counterclaim Defendants’ refusal to engage in discovery. Despite United serving four sets of discovery requests, Counterclaim Defendants have not produced a *single* document or responded substantively to an interrogatory or request for admission since their April and May 2015 document productions that consisted of 3,900 pages of independent-contractor agreements and a subset of medical records for fifteen exemplar patients identified in United’s First Amended Counterclaim. One of Counterclaim Defendants’ attorneys even acknowledged their refusal to participate in discovery by conceding that at least three prior lawyers “all withdrew or refused to take charge of discovery.” *See* Dkt. 448, ¶ 6.

After nearly eighteen months of attorney changes and unfulfilled promises about future document productions, on February 21, 2017, United moved to compel responses to its First Set of Discovery. Dkt. 441. Counterclaim Defendants did not oppose United’s motion, and instead, Mr. Jubelt filed a declaration documenting his “diligent” work to comply with United’s discovery requests. Dkt. 448, ¶ 3. On March 22, 2017, the court found that Counterclaim Defendants had waived any previously asserted objections and ordered Counterclaim Defendants “to promptly

1 review and produce all responsive documents and to prepare and serve substantive
2 interrogatory answers.” Dkt. 462. Since the Order granting United’s motion to
3 compel nearly a year ago, Counterclaim Defendants have failed to produce one
4 document or provide substantive answers to any interrogatory, and instead, have
5 been sanctioned for their failure to comply with the court’s March 22, 2017 Order.
6 Dkts. 573, 753.

7 As United sought to enforce the court’s order, Counterclaim Defendants
8 failed to make any meaningful progress towards producing responsive documents.
9 After months of fruitless conversations, on August 21, 2017 Counterclaim
10 Defendants finally committed to searching for, reviewing, and producing
11 documents from one of four relevant locations: (i) former attorney files; (ii)
12 NexTech database;³ (iii) other electronic files; and (iv) “litigation binders.” Dkt.
13 504 at 2. On the verge of finally complying with the court’s Order, Mr. Jubelt
14 unexpectedly moved to withdraw two weeks later. Dkt. 518. Mr. Jubelt’s
15 withdrawal appears to have been a tactical move to thwart discovery and renege on
16 his promises to produce documents, not the result of some permanent fracture in the
17 relationship between Counterclaim Defendants and Mr. Jubelt. Indeed, Magistrate
18 Judge MacKinnon noted in his February 9, 2018 Order denying Counterclaim
19 Defendants’ motion for relief from sanctions, Mr. Jubelt continues to represent
20 Counterclaim Defendant Valley Surgical Center in its lawsuit against the Los
21 Angeles Coroner’s office. *See* Dkt. 753 at 4 (“It is unusual that Providers would
22 authorize a lawyer to continue to appear on their behalf—while simultaneously
23 asserting that this same lawyer was grossly negligent in representing them in a
24 different case.”).

25
26 ³ NexTech is an electronic medical records database used by Counterclaim
27 Defendants during all times relevant to this litigation. Counterclaim Defendants
28 admit that NexTech contains responsive documents, but deny they have possession,
custody, or control of them.

1 On October 7, 2017—after more than three years of litigation—Counterclaim
2 Defendants, now represented by Ms. Dean, argued for the first time that in May
3 2014, Counterclaim Defendant Surgery Center Management, LLC (“SCM”)
4 assigned the NexTech software license to a supposedly unrelated third-party named
5 Imperium Medical Services, Inc., and thus, Counterclaim Defendants could not
6 comply with the Court’s March 22, 2017, Order compelling production of patient
7 records.⁴ *See* Dkt. 544.

8 In November and December 2017, the court also ordered Counterclaim
9 Defendants to review for responsiveness to United’s outstanding discovery requests
10 (1) seized materials made available by the government for review and production;
11 (2) documents that prior counsel had previously produced to the government; and
12 (3) documents previously seized by the government but since returned to
13 Counterclaim Defendants. Dkts. 655, 674, 676. No progress has been made in
14 complying with these orders. It appears that Ms. Dean spent just three-and-a-half
15 hours at a storage facility to review certain materials seized by the government.
16 Dkt. 758-1, ¶ 10. As to the approximately 1.2 million pages that Sheppard Mullin
17 produced to the government in response to subpoenas, Ms. Dean states only that it
18 is “not physically possible” for her to examine these documents without any
19 indication as to why or what effort, if any, she has undertaken to do so. Dkt. 757, ¶
20 15.

21 Again on the verge of having to review and produce documents responsive to
22 United’s discovery requests, Ms. Dean unexpectedly moves to withdraw. Ms. Dean

24 ⁴ To consider the propriety of the supposed NexTech assignment—which
25 Counterclaim Defendants concede occurred *after* the Plaintiff Providers filed suit
26 against United—Magistrate Judge MacKinnon held a three-day evidentiary hearing
27 at which he considered whether Imperium Medical Services, Inc. is an alter-ego of
28 Counterclaim Defendants or whether Counterclaim Defendants otherwise
maintained possession, custody, or control of NexTech. Following the hearing, the
parties submitted proposed findings of fact and conclusions of law and this issue is
still under consideration by Magistrate Judge MacKinnon. *See* Dkts. 725, 748.

1 notes that on February 5, 2018, she sent written notice to “the Clients” alerting
2 them of her intention to withdraw. Dkt. 757 at 2.⁵ This was only four days before
3 she filed the motion. Ms. Dean further provides no indication as to who she
4 notified, particularly for the corporate Counterclaim Defendants. Ms. Dean should
5 be required to disclose the identity of the person or persons for each of the
6 corporate Counterclaim Defendants she notified.

7 On the same day as Ms. Dean filed her motion to withdraw, Counterclaim
8 Defendants filed a Motion for Protective Order asking Magistrate Judge
9 MacKinnon to issue an order requiring United to pay Counterclaim Defendants’
10 attorney’s fees and costs incurred in reviewing and producing any and all
11 documents in discovery in this action. Dkt. 758. Ms. Dean notes in her motion to
12 withdraw that *if* the court were to grant Counterclaim Defendants’ Motion for
13 Protective Order and require United to pay her attorney fees, then she will *not*
14 *withdraw*. Dkt. 757, ¶ 20.

15 II. ARGUMENT

16 “The decision to grant or deny counsel’s motion to withdraw is within the
17 discretion of the trial court.” *Pini USA, Inc. v. NB Glob. Commodities, LLC*, 2017
18 U.S. Dist. LEXIS 181282, at *5 (C.D. Cal. Nov. 1, 2017); *see also* L.R. 83-2.3.2.
19 The moving party must demonstrate “good cause” before they are permitted to
20 withdraw, *see* L.R. 83-2.3.2, and to determine what constitutes good cause, courts
21 weigh these factors: “(1) the reasons why withdrawal is sought; (2) the prejudice
22 withdrawal may cause to other litigants; (3) the harm withdrawal might cause to the
23 administration of justice; and (4) the degree to which withdrawal will delay the
24 resolution of the case.” *Beard v. Shuttermart of Cal., Inc.*, 2008 U.S. Dist. LEXIS

25
26 ⁵ Curiously, while the Motion refers to a February 5, 2018 written notice to the
27 Clients, in Ms. Dean’s supporting Declaration, she states that “On January 31,
28 2018, I notified each of my clients of my intention to seek Mandatory Withdrawal
from this proceeding.” Dkt. 757 at 17.

1 10575, at *6-7 (C.D. Cal. Feb. 13, 2008) (citing *Irwin v. Mascott*, 2004 U.S. Dist.
2 LEXIS 28264, at *4 (N.D. Cal. Dec. 1, 2004)).

3 Because the California Rules of Professional Conduct govern termination of
4 an attorney-client relationship, *see* Cal. Code Prof'l Conduct 3-700, district courts
5 look to that rule to determine the circumstances in which an attorney may
6 withdraw. Here, Ms. Dean's motion is premised entirely on her assertion that the
7 California Rules of Professional Conduct *require* that she seek "mandatory
8 withdrawal." Dkt. 757 at 4 (citing Cal. Code Prof'l Conduct 3-700(B)). Her
9 argument misconstrues the law and facts regarding mandatory withdrawal, and it
10 further fails to adequately acknowledge the prejudice that will inure to United for
11 what could be the seventh change of counsel since this Court dismissed Plaintiffs'
12 claims on May 16, 2016.

13 **A. A Discovery Dispute Does Not Constitute Good Cause To Withdraw**

14 Cal. Code Prof'l Conduct 3-700(B)(3) requires withdrawal if the attorney's
15 "mental or physical condition renders it unreasonably difficult to carry out the
16 employment effectively." Here, Ms. Dean claims that it is "physically impossible"
17 for her to review and produce documents in compliance with various court orders,
18 and thus, this rule compels her withdrawal. *See* Dkt. 757 at 4.⁶ But courts interpret
19 the rule's reference to "mental or physical condition" in the context of physical
20 *health*, and not in the context of an attorney's professed inability to comply with
21 court orders and discovery rules. *See, e.g., Smith v. Swarthout*, 2016 U.S. Dist.
22 LEXIS 5060, at *6 (N.D. Cal. Jan. 13, 2016). Ms. Dean has provided no evidence
23 suggesting that her mental or physical health or impairment prevents her continued
24

25
26 ⁶ Ms. Dean separately complains of the "impenetrable physical barrier" and the
27 "extraordinary physical impracticality" of complying with "the Court's instructions
28 and fulfilling United's discovery requests. Dkt. 757 at 4, 6. Hyperbole aside, none
of her complaints constitute the "mental or physical condition" contemplated by
Cal. Code Prof'l Conduct 3-700(B)(3).

1 representation.⁷ In fact, to the contrary Ms. Dean states that *if* the court were to
2 grant Counterclaim Defendants' Motion for Protective Order and require United to
3 pay her attorney fees, then she will not withdraw. Dkt. 757, ¶ 20. Proving that it is
4 not "physically impossible" for her to continue representation, rather her motion to
5 withdraw is an attempt to preempt the court's orders on Counterclaim Defendants'
6 pending fee-shifting motion as well as whether they will be required to produce
7 responsive patient documents from the NexTech database.

8 Even if Ms. Dean's interpretation of "physical condition" had any grounding
9 in the law, she has no factual basis on which to claim her review and production of
10 responsive documents is "impossible" or even unduly burdensome.⁸ Ms. Dean's
11 complaints about the burdens of civil discovery essentially boil down to "it's too
12 hard." This is not enough to shift attorney fees and costs onto United, *see* Dkt. 767,
13 and it is not enough to establish good cause for withdrawal. First, Ms. Dean's
14 motion offers no evidence for her claim that United's discovery request necessitates
15 review or production of "millions of documents." Dkt. 757 at 4-5. United has not
16 requested *all* documents relating to *all* 1,300 patients at issue in the counterclaim,
17 and instead, it has consistently offered to meet-and-confer with Counterclaim
18 Defendants regarding the scope of production and to prioritize certain records or
19 patients. *See* Dkt. 441-2 at 20-21; Dkt. 604 at 12 n.16. Counterclaim Defendants
20 have never engaged in this process. Second, Ms. Dean fails to acknowledge that
21 there are steps she can take to reduce any conceivable burden, including the use of

22 ⁷ Ms. Dean's failure to address any mental or physical impairment stands in stark
23 contrast to the motion and declaration filed by Roger Diamond in which he
24 describes a series of medical treatments, and then offers to further describe his
25 health condition *in camera*. Dkt. 764. United takes no position on Mr. Diamond's
26 motion.

27 ⁸ Counterclaim Defendants make an identical argument in support of their pending
28 motion for protective order and cost shifting. Dkt. 758. United separately opposes
that motion, *see* Dkt. 767. Magistrate Judge MacKinnon will hear this motion on
March 13, 2018.

1 search terms for electronically stored information or the use of a Fed. R. Evid. 502
2 clawback agreement. *See Adair v. EQT Prod. Co.*, 2012 U.S. Dist. LEXIS 90250,
3 at *13-14 (D. W. Va. June 29, 2012) (finding “costs could be mitigated by the use
4 of electronic searching and production, together with the protections of the
5 Protective and Clawback Order”). Third, her claim that complying with Magistrate
6 Judge MacKinnon’s discovery orders is too overwhelming for her and her clients is
7 belied by their ability to submit torrents of prodigious, repetitive and unnecessary
8 briefings—even on short notice—when it serves their interests to do so. For
9 example, they recently filed seven motions (totaling nearly 125 pages) to dismiss
10 the Third Amended Counterclaim, containing nearly identical arguments this Court
11 has already rejected. *See* Dkts. 705-08, 710, 712, 728. And on January 29, 2018,
12 Counterclaim Defendants filed 100 pages of “objections” to United’s proposed
13 Findings of Fact regarding the NexTech/Imperium hearings even though the court
14 never authorized or called for such briefing. Dkts. 733-36, 747. In addition to this
15 and related work,⁹ the appeal to the Ninth Circuit of Certain of this Court’s orders
16 in the litigation that this Court described as “gargantuan” against over 300

17
18 ⁹ Similarly, Counterclaim Defendants have filed in this action multiple motions to
19 stay discovery (Dkts. 102, 390, 437, 561); multiple motions in limine regarding a
20 pre-trial evidentiary hearing (Dkts. 615, 661); multiple “objections” or sur-replies
21 that the court never requested (Dkts. 555-60, 562, 600, 640); serial motions to
22 reconsider the Court’s Order dismissing Plaintiffs’ Claims (Dkts. 349, 398, 401,
23 405), and multiple, frivolous appeals to the Ninth Circuit on non-appealable orders
24 (Dkts. 321, 359, 433, 633). Many of these motions have been repetitive, such as
25 when Mr. Jubelt sought on behalf of Plaintiffs to recuse Your Honor on the same
26 grounds that Robert Rice argued before him (and the Ninth Circuit) on behalf of
27 Counterclaim Defendant Julian Omidia a year earlier. Dkts. 256, 423. Notably, the
28 “sole practitioner” status of Ms. Dean and her predecessors has not inhibited their
ability to file lengthy submissions on short notice, suggesting that Counterclaim
Defendants can access the necessary resources when it suits them. As one recent
example illustrates, Counterclaim Defendants immediately marshal the necessary
resources when they perceive a benefit to their litigation position. *See* Dkt. 684
(filing a 21-page opposition less than 24 hours after United’s *ex parte* application to
stay a Rule 30(b)(6) deposition—an application Magistrate Judge MacKinnon
nevertheless granted).

1 defendants is still being handled solely by Ms. Dean, suggesting that her
2 withdrawal reflects her clients' desire to reallocate resources rather than any
3 incapacity on her part.

4 Ms. Dean's burden argument also fails because United's First Set of
5 Discovery—the requests about which she complains—have been pending for more
6 than three years, or long before she became involved in this case. In fact, these
7 requests were the subject of significant discussion among the parties in the months
8 prior to her appearance. In other words, nothing has changed about the discovery
9 demands such that it is now impossible for Ms. Dean to continue the representation
10 in a way that was not apparent when she agreed to represent Counterclaim
11 Defendants. Magistrate Judge MacKinnon had granted United's motion to compel
12 five months earlier and there was a string of status conferences with the Court
13 regarding Mr. Jubelt's attempts to comply with the discovery order. Ms. Dean
14 willingly assumed this representation as a solo practitioner knowing the case's
15 complexities, Hooper Lundy's withdrawal as prior counsel based on her clients'
16 failure to pay their attorney fees, and presumably, the well-publicized seizure of
17 some portion of her clients' assets. Just six months after appearing, she should not
18 be permitted to use a discovery dispute—one that plainly existed prior to her
19 involvement—as an excuse to withdraw. *Cf. Darby v. Torrance*, 810 F. Supp. 275,
20 276 (C.D. Cal. 1992) (denying motion to withdraw because moving attorney knew
21 of the possibility of not getting paid at the time he agreed to the representation).¹⁰ It
22 is clear that Ms. Dean's motion to withdraw—as well as Mr. Jubelt's before her—is
23 obvious gamesmanship when Counterclaim Defendants' past history have made

24 ¹⁰ Ms. Dean also appears to seek mandatory withdrawal on the basis that she will
25 violate a Rule of Professional Conduct or the State Bar Act. Dkt. 757 at 6-7 (citing
26 Cal. Code Prof'l Conduct 3-700(B)(2)). She never identifies the rule her continued
27 representation will force her to violate, and thus, United is unable to adequately
28 respond. To the extent she argues that the so-called burden of civil discovery will
force her to violate such a rule, she is still unable to establish that the discovery
requests at issue are as burdensome as she claims.

1 clear that they will not participate in discovery on United's counterclaim,¹¹ yet have
2 not ceased their affirmative claims against United by continuing to proceed with
3 multiple appeals in which Ms. Dean is still counsel of record.

4 Moreover, Ms. Dean's burden argument presupposes that she is the only
5 person capable of assisting Counterclaim Defendants with discovery. But recent
6 sworn testimony suggests that Ms. Dean is far from alone. For example, Brian
7 Oxman has been the self-described "litigation coordinator" for Counterclaim
8 Defendant Surgery Center Management and related Omid entity Golden State
9 Practice Management, LLC, and in that role, he has "coordinated litigation . . . for
10 each one of the counterclaim defendants." Nov. 14, 2017 Tr. 16:5-9. Indeed, Ms.
11 Dean paid Mr. Oxman for this work. *Id.* at 16:19-17:14. And more recently and at
12 Ms. Dean's invitation, Mr. Oxman has even attended meet-and-confer sessions
13 among counsel (pursuant to L.R. 37-1), despite being disbarred in July
14 2012. Similarly, Mr. Oxman's wife, Maureen Jaroscak, has represented various
15 Counterclaim Defendants including all three of the individual Omidis and
16 SCM. Dec. 12, 2017 Tr. 149:17-25; 152:2-7; 205:17-22. Although she has not
17 filed an appearance in this case, she maintains an office at 9100 Wilshire Blvd.,
18 Suite 800 along with several other Counterclaim Defendants including SCM,
19 DeVida USA, LLC, and various other Omid entities (Dec. 12, 2017 Tr. 194:25-
20 195:5); has assisted with setting-up dozens of Omid-affiliated entities, including
21 many Counterclaim Defendants; and has assisted in filing motions and other
22 submissions in this matter (*see, e.g.*, Dkts. 234; 247; 332; 333; 351; 368; 471;
23 479). Though Ms. Dean has been the only attorney to sign filings on behalf of
24 Counterclaim Defendants over the last six months, the sheer volume of briefing and
25 Mr. Oxman's and Ms. Jaroscak's relationship with Counterclaim Defendants

26 _____
27 ¹¹ The individual Counterclaim Defendants have invoked the Fifth Amendment in
28 attempting to avoid all discovery, including an improper objection to producing any
documents. *See* Dkt. 758 at 10, n.3.

1 suggests Ms. Dean has plenty of help, and she should be able to turn to these same
2 individuals for purposes of document discovery.

3 Finally, Ms. Dean does not request permissive withdrawal under Cal. Code
4 Prof'l Conduct 3-700(C), though she cites several cases addressing instances in
5 which a court has granted permissive withdrawal. *See, e.g., U.A. Local 342 Joint*
6 *Labor-Mgmt. Comm. v. S. City Refrigeration, Inc.*, 2010 U.S. Dist. LEXIS 42700
7 (N.D. Cal. Mar. 31, 2010); *Hershey v. Berkeley*, 2008 U.S. Dist. LEXIS 110402
8 (C.D. Cal. Oct. 24, 2008); *Cal. Native Plant Soc'y v. United States E.P.A.*, 2008
9 U.S. Dist. LEXIS 95167 (N.D. Cal. Nov. 14, 2008). Instead she wants to continue
10 with this representation, and seeks *only* mandatory withdrawal *if* Magistrate Judge
11 MacKinnon denies Counterclaim Defendants' motion requiring United to pay
12 Counterclaim Defendants' attorney's fees (in an untold amount) to review and
13 produce *any* documents in this litigation. Dkt. 757 at 17, ¶ 20. Indeed, Ms. Dean
14 has offered no other explanation for her motion, including common reasons such as
15 a communication breakdown with her clients or some other irreparable
16 disagreement.

17 **B. Ms. Dean's Withdrawal Will Prejudice United And Delay The**
18 **Resolution Of This Litigation**

19 There is apparently no dispute among the parties that Ms. Dean's withdrawal
20 will further delay this litigation. *See* Dkt. 757 at 11 (acknowledging "Ms. Dean's
21 withdrawal will likely delay" certain previously scheduled hearings and
22 depositions); *see also Israel Travel Adv. Serv. v. Israel Identity Tours*, 1993 U.S.
23 Dist. LEXIS 7433, at *6 (N.D. Ill. June 1, 1993) (stating, "the repeated substitution
24 of counsel prevented [the parties] from taking orderly discovery"). This case has
25 been delayed enough because of Counterclaim Defendants' numerous attorney
26 changes, unnecessary motion practice, and abject failure to engage in meaningful
27 discovery. Any further delay because of yet another attorney change will prejudice
28 United.

1 Left unsaid by Ms. Dean's motion is the true reason for seeking withdrawal:
2 to further delay the production of documents critical to United's counterclaim.
3 United long ago served discovery requests seeking Patient Notes, superbills, and
4 insurance-verification forms, among other internal billing documents. Often, these
5 documents provide critical information about a patient's lack of coverage for
6 bariatric surgery, Counterclaim Defendants' knowledge of that lack of coverage,
7 and in some instances, the lies Counterclaim Defendants told to patients about their
8 coverage. *See* Dkt. 531, ¶ 125.

9 The case of United Member 8 illustrates why Counterclaim Defendants
10 might prefer the loss of counsel over the disclosure of documents that the Court has
11 ordered produced. Patient Notes of United Member 8 provide powerful evidence
12 that in the days before her surgical procedure, Counterclaim Defendants knew that
13 the patient had no bariatric benefits—even with medical necessity—and despite that
14 Counterclaim Defendants assured her that she had such coverage, and they then
15 performed medical procedures whose only purpose was to clear her for Lap Band
16 surgery that she was never going to have. *See* Dkt. 549-3, Ex. 2. United Member
17 8's Insurance-Verification form similarly indicates that Counterclaim Defendants
18 knew that she did not have bariatric-surgery benefits. *See* Dkt. 531, Ex. G.
19 Notably, United has possession of these documents through independent witnesses,
20 not discovery in this case; indeed, Counterclaim Defendants have *never* produced a
21 complete set of Patient Notes for United Member 8 or any other patient at issue,
22 and evidently are doing whatever they can to forestall those productions. Instead,
23 in a declaration previously filed in this case Counterclaim Defendants attached a
24 cherry-picked excerpt of United Member 8's Patient Notes that actually excludes
25 the entries showing that they knew United Member 8 lacked bariatric-surgery
26 benefits, and that they put her through a battery of preparatory tests for a Lap Band
27 despite knowing that she would never get one. *Compare* Dkt. 55, ¶ 22 Ex. F. *with*
28

1 Ex. 549-3, Ex. 2.¹² In other words, Ms. Dean’s transparent effort to withdraw in
2 the face of imminent orders to produce documents—like Mr. Jubelt’s before her—
3 is really designed to delay the day in which Counterclaim Defendants are forced to
4 answer for the fraud they perpetrated on United and the health plans it administers.

5 Even absent the apparently bad faith reasons for seeking withdrawal, United
6 will be prejudiced if Ms. Dean is allowed to withdraw. This case has already been
7 pending for nearly four years and United has tried in vain to move discovery along.
8 Currently, the fact discovery deadline is September 14, 2018 and the trial is
9 scheduled for January 29, 2019. Dkt. 468. Yet seven months from the close of fact
10 discovery, United is still waiting for production of documents responsive to its
11 requests served three years ago. This has caused delays in United’s ability to take
12 depositions and even when it has attempted to schedule depositions without the
13 benefit of documents, Counterclaim Defendants have thrown up roadblock after
14 roadblock based on the claimed unavailability of counsel and a revolving door of
15 attorneys. Ms. Dean’s motion makes no indication that any Counterclaim
16 Defendant is willing to retain substitute counsel and in fact suggests that no counsel
17 could to the work necessary.

18 Under the Local Rules, “no organization or entity . . . including corporations
19 may appear in any action or proceeding unless represented by an attorney permitted
20 to practice before this Court.” L.R. 83-2.2.2; *see also Rowland v. Cal. Men’s*
21 *Colony, Unit II Men’s Advisory Council*, 506 U.S. 194, 201-02 (1993) (“It has been
22 the law for the better part of two centuries . . . that a corporation may appear in the
23

24 ¹² United obtained United Member 8’s Patient Notes only through communications
25 with United Member 8’s attorney and Dr. Marvin Perer, one of her treating
26 physicians. Based on the excerpted Patient Notes attached to an October 2014
27 declaration—months after *both* the government seizure and the supposed
28 assignment of the NexTech software license—it is clear that Counterclaim
Defendants have access to these critical documents, and they have chosen instead to
conceal them from United and the Court in an attempt to avoid liability for their
fraud.

federal courts only through licensed counsel.”). As such, this case will grind to a halt even more should Ms. Dean be allowed to withdraw, especially given that there is no indication that her clients are seeking to obtain substitute counsel. To the extent Counterclaim Defendants use this change of counsel as yet another delay tactic, this Court should enter default judgment in favor of United. *See* L.R. 83-2.2.4; *Emp. Painters’ Trust v. Ethan Enters., Inc.*, 480 F.3d 993, 998 (9th Cir. 2007) (upholding default judgment after corporation failed to hire an attorney following withdrawal).

III. CONCLUSION

Based on the foregoing, the Court should deny Ms. Dean’s Motion to be Relieved as Counsel for Counterclaim Defendants.¹³

Dated: February 26, 2018

By: /s/ Bryan S. Westerfeld

By: /s/ Michelle S. Grant

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¹³ United has attempted for some time to schedule various depositions in this matter. It is currently working with Ms. Dean to schedule a handful of depositions in March. Ms. Dean has indicated that even if her motion to withdraw is granted she will continue on the case to complete depositions scheduled shortly after this hearing. Today, Ms. Dean requested that the hearing on motion to withdraw be rescheduled from March 19. If the Court grants Ms. Dean’s motion, United requests an order requiring her to continue as counsel to complete any depositions scheduled in March or April.